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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/629,380	07/29/2003	Kirk Edward Vandezande	101384-22	6539

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NORRIS, MCLAUGHLIN & MARCUS
875 THIRD AVE
18TH FLOOR
NEW YORK, NY 10022

EXAMINER

ZHOU, SHUBO

ART UNIT	PAPER NUMBER
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1631

MAIL DATE	DELIVERY MODE
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08/01/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Notice of Non-Compliant
Amendment (37 CFR 1.121)**

Application No.

10/629,380

Applicant(s)

VANDEZANDE, KIRK
EDWARD

Examiner

Shubo (Joe) Zhou

Art Unit

1631

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The amendment document filed on 15 May 2007 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121 or 1.4. In order for the amendment document to be compliant, correction of the following item(s) is required.

THE FOLLOWING MARKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

- ☒ 1. Amendments to the specification:
- ☐ A. Amended paragraph(s) do not include markings.
 - ☐ B. New paragraph(s) should not be underlined.
 - ☒ C. Other see continuation sheet.
- ☐ 2. Abstract:
- ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
 - ☐ B. Other _____.
- ☐ 3. Amendments to the drawings:
- ☐ A. The drawings are not properly identified in the top margin as "Replacement Sheet," "New Sheet," or "Annotated Sheet" as required by 37 CFR 1.121(d).
 - ☐ B. The practice of submitting proposed drawing correction has been eliminated. Replacement drawings showing amended figures, without markings, in compliance with 37 CFR 1.84 are required.
 - ☐ C. Other _____.
- ☒ 4. Amendments to the claims:
- ☐ A. A complete listing of all of the claims is not present.
 - ☐ B. The listing of claims does not include the text of all pending claims (including withdrawn claims)
 - ☒ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following status identifiers: (Original), (Currently amended), (Canceled), (Previously presented), (New), (Not entered), (Withdrawn) and (Withdrawn-currently amended).
 - ☐ D. The claims of this amendment paper have not been presented in ascending numerical order.
 - ☒ E. Other: see continuation sheet.
- ☐ 5. Other (e.g., the amendment is unsigned or not signed in accordance with 37 CFR 1.4):

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP § 714.

TIME PERIODS FOR FILING A REPLY TO THIS NOTICE:

1. Applicant is given **no new time period** if the non-compliant amendment is an after-final amendment or an amendment filed after allowance. If applicant wishes to resubmit the non-compliant after-final amendment with corrections, the **entire corrected amendment** must be resubmitted.
2. Applicant is given **one month**, or thirty (30) days, whichever is longer, from the mail date of this notice to supply the correction, if the non-compliant amendment is one of the following: a preliminary amendment, a non-final amendment (including a submission for a request for continued examination (RCE) under 37 CFR 1.114), a supplemental amendment filed within a suspension period under 37 CFR 1.103(a) or (c), and an amendment filed in response to a *Quayle* action. If any of above boxes 1. to 4. are checked, the correction required is only the **corrected section** of the non-compliant amendment in compliance with 37 CFR 1.121.

Extensions of time are available under 37 CFR 1.136(a) only if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action.

Failure to timely respond to this notice will result in:

Abandonment of the application if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action; or

Non-entry of the amendment if the non-compliant amendment is a preliminary amendment or supplemental amendment.

Legal Instruments Examiner (LIE), if applicable

Telephone No.

Continuation of 1C, 4C and 4E:

The filing of multiple amendments that are not compliant with 37 CFR 1.121 has affected the speed of prosecution. The examiner wishes to summarize the multiple amendments filed after the last Office action on the merits and explicitly point out what have been entered, and what have not.

It should first be pointed out that when filing an amendment to the specification or the claims, only the amended part of the specification (or the entire specification in case of a substitute specification) or the amended claims, not the original specification or the original claims, should be filed. It is confusing that applicant frequently filed the original specification and the original claims while filing an amendment.

It should be further pointed out that if a substitute specification is filed, there should be no amendments to parts of the specification filed concurrently because all the amendments to the specification should be reflected in the substitute specification, which is the reason a substitute specification is filed in the first place.

It should also be pointed out that if the Office issues a Notice of Noncompliant Amendment, only those sections (e.g. specification, claims or drawings) that have problems of noncompliance have not been entered and should be refiled. Under normal circumstances, those sections that are not mentioned in the Notice as being noncompliant have been entered and should be based on in any immediate future amendment.

The most recent Notice of Noncompliant Amendment regarding the amendments filed 2/12/07 mailed 5/9/07 only pointed out that the amendment to the specification was noncompliant indicating that the amendment to the claims filed 2/12/07 have been entered, should be based upon in future amendment. However, the amendment to the claims filed 5/15/07 are not based on the amendment filed 2/12/07 as many limitations that have been added in the amendment of 2/12/07 are still underlined in the amendment of 5/15/07.

With regard to the amendments to the specification filed after the last Office action on the merits, it is complicated. While the Notice of Noncompliant Amendment mailed 1/23/07 was silent about the amendment to the specification filed 1/3/07, which generally implies that the amendment had been entered, the Notice of Noncompliant Amendment mailed 5/9/07 did point out that the amendment was not compliant.

Given the complicated situations including the filing of amendments to the specification and the original specification repeatedly, the filing of a substitute specification and separate amendments to portions of the specification at the same time, the Office did not catch many of the problems in the amendments. Applicant is hereby notified that the substitute specification filed on 1/3/07 and 2/12/07 have not been entered for at least the following reasons (use the substitute specification filed 2/12/07 as example):

- The phrase "[Den Dunnen et al. 1989]" on page 1 is underlined in the original specification, and is also underlined in the marked-up copy of the substitute specification, but it is not underlined in the clean version of the substitute specification.

- In the separate amendment to portions of the specification, the word "diagnosis" on line 5 of the first paragraph on page 3 of the specification is changed to "diagnose." However, in both the marked-up copy and the clean version of the substitute specification, the word "diagnosis" on line 5 is not underlined or struck-through indicating no change. Thus, the substitute specification does not reflect the changes made in the separate amendment to portions of the specification filed concurrently.

In summary, none of the amendments to the specification including the substitute specification have been entered. The amendment to the claims filed 2/17/07 have been entered. Thus, any future amendment to the specification should base upon the amendment to the specification last entered or originally filed, and any future amendment to the claims should base upon the amendment to the claims filed 2/17/07, which has been entered.

Applicant is again advised that when filing an amendment to the specification or the claims, do not include the original specification or claims in the filing.

Given the complicated situations, applicant is urged to contact the examiner prior to responding to this Notice should there be any questions.

/Shubo (Joe) Zhou/

SHUBO (JOE) ZHOU, PH.D.
PRIMARY EXAMINER

571-272-0724